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ABSTRACT

Although state takeover of low-performing schools is not a new phenomenon in American education, it has seldom been exercised. Takeover actions exist in 11 states--Arkansas, Georgia, Illinois, Kentucky, New Jersey, New Mexico, New York, Ohio, South Carolina, Texas, and West Virginia--but only New Jersey and Kentucky have exercised steps leading to takeover. This paper provides background information on state takeovers and recommendations for the North Carolina State Board of Education as it develops state policies regarding sanctions for low-performing school districts. The first part offers an overview of sanction policies in general, including state takeovers of low-performing districts. The second part summarizes the takeover experience in Kentucky, which shares demographic similarities with North Carolina. In Kentucky, the takeover process met with local resistance and deteriorated in court legislation. A review of research and a look at the stormy outcomes of "last resort" sanctions in New Jersey and Kentucky indicate that takeovers often do little to move districts toward long-term educational improvement. Seven recommendations are offered for conducting a "clear, fair, and open" takeover process" uhder the following categories: (1) ensuring fairness and equity; (2) addressing building-level failure; (3) establishing an improvement-oriented sanctions process; (4) maintaining local control of schools; and (5) creating a method for quality control. The National Study Group of the Office of Education Research and School Improvement, U.S. Department of Education, advises state officials to consider a broad range of help, proceed in fair and well-defined stages, and es'ablish a blue-ribbon independent body. (LMI)

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THE USE OF SANCTIONS WITH LOW PERFORMING SCHOOL DISTRICTS

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PREFACE

This report has been prepared by the North Carolina Educational Policy Research Center at the request of the North Carolina State Board of Education. The purpose is to provide background information and recommendations for the Board's consideration as it develops state policies regarding sanctions for low performing school districts.

The information contained in this report is based on the following:

1. Conversations with state officials and reviews of statutes in the following states: Arkansas, Georgia, Illinois, Kentucky, New Jersey, New Mexico, New York, Ohio, South Carolina, Texas, and West Virginia.

2. Review of the national commission and study group reports on takeover and sanctions by the State Accountability Study Group and the Office of Educational Research and School Improvement, U.S. Department of Education.

3. Review of the research evidence available on sanctions, including an interview with the Director of the Consortium for Policy Research in Education, which has conducted the only national research study on takeover sanctions.

4. Contacts with the Accountability Division of the U.S. Department of Education, Education Commission of the States, National Association of State Boards of Education, National Council of State Legislatures, National Governors Association, and Phi Delta Kappa.

5. Contact with the Legislative Research Service of the North Carolina Legislature, the North Carolina Association of School Administrators, and the North Carolina School Boards Association.

WHAT ARE SANCTIONS?

In response to the continued criticism of the nation's public educational system during the 1980s, all but one of the states have developed accountability systems. Twenty-five of the fifty states have policies that attach positive or negative consequences to measures of student outcomes as part of their accountability system (OERI State Accountability Study Group, 1988).

As policy strategies, the goal of rewards and sanctions is to produce higher quality education evidenced by improved student performance. The assumption behind rewards is that school districts will strive to change and improve if they are rewarded for their efforts. The assumption behind sanctions is that school districts will strive to change and improve if they are punished or threatened with punishment for failing to improve. Rewards and sanctions are a "carrot and stick," policy strategy designed to overcome the inertia of the status quo.

Sanctions take many forms - from perceived to real. The mere establishment of an accountability system may be perceived by those opposing or fearing state oversight to be a sanction. The act of publishing report cards or performance indicators to the general public is often viewed by under-performing districts as a sanction. Witholding status or resources such as accreditation or access to special sources of funding are sanctions that have concrete consequences for districts. As state legislatures have become more concerned about the quality of schooling, they have included increasingly severe sanctions in accountability statutes. The most extreme sanction emerging in state accountability systems is the policy of state takeover of low performing school districts.

The concept of takeover of local, low performing schools and school districts is analagous to financial bankruptcy and receivership in the business sector. Persistent low student performance relative to established standards is indicative of "academic bankruptcy." School districts and/or schools considered to be academically bankrupt are placed in receivership (usually a takeover by the state) if they do not improve within a certain time frame.

The argument in favor of including "last resort" sanctions for low performance is straightforward and logically irrefutable. No one would choose to allow the continued operation of a local school or school system that is unable to provide satisfactory education to all children and youth. However, sanctions are a penalty-based policy and often provoke negative consequences, e.g., reluctant and/or limited compliance, resistance, and decline in productivity as a result of the stigma attached to sanctions.

School district takeover is not a new phenomenon in American education. The Federal government took over local and state systems of education in order to achieve desegregation in the 1960s. More recently, states have taken over specific components of school district operation as, for example, the financial operation of troubled districts in Kentucky, New Mexico, and Texas. In other instances, such as in Richmond County, California, and Chelsea, Massachusetts, school districts asked to be taken over to deal with problems they themselves could not solve.

State takeover of low performing schools and school districts as a penalty-based sanction, however, has seldom been exercised. While takeover sanctions exist in eleven states, Arkansas, Georgia, Illinois, Kentucky, New Jersey, New Mexico, New York, Ohio, South Carolina, Texas, and West Virginia (Jennings, 1989), only New Jersey and Kentucky have actually exercised steps leading to takeover.

STATE POLICIES AND EXPERIENCES WITH SANCTIONS LEADING TO TAKEOVER

States that include takeover as a sanction for low performance generally have laws and policies related to: (a) the criteria for declaring a district to be low performing, (b) a comprehensive analysis or evaluation of the district to identify the problems leading to low performance, (c) the development of strategies for improving the low performance, (d) the provision of technical and other assistance, and (e) the exercise of ultimate sanctions including

takeover. All of the states included in the following discussion[1] have provisions for the takeover of school districts. Three of the states -- Kentucky, Ohio, and Texas -- also extend sanction policies, including takeover, to individual schools within the districts.

Criteria for Low Performance

States have chosen one of two approaches in setting criteria for identifying low performing school districts. Kentucky, Ohio, and South Carolina, rely primarily on indicators of student performance on national or statewide achievement tests, student drop-out rate, and student attendance. Georgia, New Jersey, Texas, and West Virginia use, in addition to student performance, criteria such as finance, facilities, and personnel. In New Jersey, Texas, and West Virginia, the criteria are the same as those used to determine state accreditation of school districts.

Comprehensive Analysis of Problems

At some time in the sanctions process, all of the states include provisions for a comprehensive analysis, review, or evaluation of the low performing districts by the state. In most of the states, this analysis occurs in an initial stage and forms the basis for district improvement or corrective plans. In other states (e.g., New Jersey, Ohio, and Georgia), the analysis occurs later, when improvements have not been achieved and a more in-depth evaluation and corrective plan is needed.

Strategies for Improvement

The primary strategy in statute for promoting improvement is the development and implementation of an improvement or corrective plan by the district. Development and implementation of the plan may occur before a state team is sent in for a comprehensive review, or it may be based on the results of this review. In the case in which the plan is developed in a later stage, it is often developed by the state.

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[1] States included in this analysis are Georgia, Kentucky, New Jersey, Ohio, South Carolina, Texas, and West Virginia. See Appendix A for brief summaries of the states' laws regarding sanctions.

Technical or Other Assistance

Another common strategy in statute is the provision of technical or other assistance to the district. In most states, technical assistance is to be provided by the state education agency. In Kentucky, assistance is to be provided by "distinguished educators" -- practicing teachers and administrators. A few states have provisions for providing additional funds to low performing school districts, while others may grant waivers from state regulations.

States vary in the amount of local involvement allowed during this stage. Some states encourage local districts to conduct their own self-study, develop improvement plans based on their own assessment of needs, and choose their own methods of technical assistance and improvement. In most state statutes, however, these responsibilities are assigned to the state.

State statutes also vary in the specification of the number and kind of procedures that are implemented before an ultimate sanction is invoked. Ohio's plan for helping troubled districts contains a series of repeated procedures of analysis, planning, implementation and re-analysis. Plans used by other states, e.g., Texas, have fewer cycles for improvement before more serious sanctions are enforced.

Exercising Ultimate Sanctions

When attempts to improve a school district have failed, state statutes typically call for the removal of the district's leadership, i.e., terminating the superintendent and/or disbanding of the local school board. Provisions are made for new leadership to be brought into the district -- either a new or interim superintendent or a state selected manager or management team. Annual progress reports are required to inform the state of the district's success in improving. Georgia, South Carolina, and Texas, may also withhold state funds from the district. In two states, Kentucky and West Virginia, students may transfer out of sanctioned schools at the local district's expense. School districts in Texas may be annexed to adjacent, accredited districts.

The greatest variation among states is in their specifications as to fiscal responsibility for the actions to be taken during sanction. Some states have provisions for paying for the changes,

while others place the responsibility on the local district. Existing laws, with the exception of those in Kentucky that specify financial support and technical assistance, provide little assistance to districts that have been taken over.

Provisions for sanctions for low performance are relatively new. The first laws and policies appeared in the mid 1980s. To date, eleven states have extensive sanctions specified by law; only two states have exercised sanctions to the point of intervening in local school district operation. The Consortium for Policy Research in Education, the U.S. Department of Education research center devoted to educational policy, has conducted a field study of the takeovers of school districts in Kentucky and New Jersey. The similarities of the laws and policies of Kentucky and the sanctions being proposed in North Carolina and the demographic similarities between the two states suggest that the Kentucky experience may be of value to North Carolina as it considers the policies it will develop.

THE KENTUCKY EXPERIENCE[2]

In 1984, Kentucky amended its Educational Improvement Act to include an educational deficiency program. The program required school districts to participate in a number of activities including the submission of performance reports to the State Department of Education (SDE) and the local public, the creation of a Master Educational Improvement Plan, and the development of other plans related to finance, operation, and performance. The program established nine possible areas of deficiency, including failure to comply with required reports and timelines and failure to meet standards regarding performance on national and state standardized tests[3], attendance, and drop out rate.

The program included four phases of compliance with the standards. Phase I classification was reserved for those districts with no deficiencies with regard to state process and performance standards or with their own improvement plan. Phase II included school districts that did not comply with or adhere to the timelines established in their own approved improvement plans. The districts in this phase were eligible for, but not mandated to accept, state technical assistance and recommendations for improving the deficiencies. Phase III was reserved for persistently non-complying districts. Intervention provided by the state to districts

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[2] Unless otherwise indicated, information provided in this section was taken from Fuhrman & Elmore (1991). We gratefully acknowledge the permission of Dr. Fuhrman to use this information.

[3] During this time, student performance on statewide tests was not to be used as a criterion for deficiency because the state was in the process of developing and standardizing a new statewide achievement test.

in Phase III included: (a) an extensive curriculum audit consisting of reviews of all major governance, financial, and curriculum documents, interviews with members of the local school board, school personnel at all levels, parents and other related persons, and site visits to every classroom in every school; (b) management assistance by a team manager who would spend one to two months in each district and then spend approximately five days per month in the district thereafter, and (c) technical assistance provided through a team consisting of the management assistance contact, an instructional assistance broker, and a department coordinator who would plan and marshal other department staff to provide interventions. In addition to the assistance, the program provided for direct supervision by SDE staff in day-to-day activities. Local school board actions were subject to approval by the state superintendent or his designee. Phase IV was a designation for districts that did not meet established timelines for correcting deficiencies. Superintendents, members of the local board, and other school district personnel of districts in Phase IV might be removed by the State Board of Education. Districts in Phase III or Phase IV were considered to be "in receivership."

From 1984 until 1989, all school districts in the state were determined to be in Phase I or Phase II. In January of 1989, two school districts, Floyd County and Whitley County, were placed in Phase III of the program after having been in Phase II for four years. Both districts were in the eastern, coal-producing part of the state and suffered from depressed economies.

Floyd County

Floyd County was placed in Phase III of the program because of a poor rate of improvement in reaching the attendance standard of 93.5%. In 1985-86 school attendance was 91.69%; in 1986-87 it was 92.42%; and in 1987-88 it was 92.53%. Although Floyd County showed improvement, the rate of improvement did not meet the minimum yearly gains specified by the state program. In a routine SDE accreditation in 1987-88, Floyd County was also cited as being non-compliant in over 90 criteria spanning curriculum and instruction, pupil services, school plant facilities, and finances. SDE curriculum auditors found serious management problems, including outdated, ineffective board policies, absence of planning and accountability, and a flourishing patronage system. The auditors also cited the absence of curriculum planning, uneven and inequitable curricula across the five high schools, the absence of comprehensive assessment, failure to use available test results to monitor curriculum, and insufficient gains in test scores over time. Auditors found excessive local fundraising activities, inefficient budgeting processes, and unsanitary, degrading facilities. Recommendations encompassing the more serious findings included revisions of the organizational structure, elimination of the patronage system, creation of a valid long-term plan, development of a procedure to use test data, revision of the budgeting system, and establishment of healthy and sanitary environments.

The state provided substantial technical assistance to the district. In one week of June 1989, sixteen state personnel were in Floyd working in teams to develop curriculum guides. In addition, inservice training on analysis of skills and development of action plans was provided for all administrators. SDE was working on a research model to assess the school climate and was helping the district with the development of an attendance plan. Between January and June, approximately 117 person days were spent in Floyd by just one division of the state agency.

Local reactions to the technical assistance provided by the state were mixed. School personnel felt that the state was initially disorganized, slow to get moving, and unrealistic when it did get organized. Teachers complained that state assistance personnel worked mostly with the district and some building level administrators, and that the presence of state assistance was not felt at the school level. However, teachers and community members saw some positive results of the assistance, such as a new district policy manual and audit recommendations concerning budgeting that were approved by the local board.

Reactions by the community to the placement of the district into receivership were also mixed. Just prior to the enactment of the 1990 legislation creating a new deficiency program in Kentucky, the Floyd County Educational Association had requested that the State Board move the district into Phase IV so that local leaders could be removed. The request was not granted.

Whitley County

Whitley County was placed in Phase III due to lack of improvement in both the attendance and drop-out standards. In 1985-86 the attendance rate was 91.29%; in 1986-87 it was 92.28%; and in 1987-88 it was 92.55%. The standard for the drop-out rate was 5.5% or below. In 1985-86 the drop-out rate in Whitley was 7.35%; in 1986-87 it was 6.43%; and in 1987-88 it was 6.84%. As in the Floyd County case, Whitley County was found deficient in its rate of improvement. The district was also judged to have serious management and financial problems; it was placed in the state's Management Assistance Program in 1986. The auditors found problems of patronage and nepotism; audit findings also suggested confusion about who was in charge of programs, great variation in teaching supplies and materials at the elementary level, poor facilities, inequities in time allocations and staffing formulas, and a defeatist attitude regarding pupil success.

Recommendations to Whitley County included developing open hiring policies, developing a strategic plan, developing a comprehensive testing policy, and reviewing the language arts program, among other things. As in Floyd County, Whitley County received considerable technical assistance from the state. The state was perceived as being instrumental in achieving some consolidation of positions in the district, but it was given little credit for anything else.

All efforts at improvement from both the state and the district were clouded by the suit Whitley County filed against the state because of the movement of the district into Phase III. The district won the suit; the court found that: (a) the state had inappropriately modified the standards for deficiency in a way that placed only Floyd and Whitley counties in Phase III; (b) the state violated equal protection provisions when it designated Floyd County and Whitley County Phase III Districts, and not other districts with equal deficiencies; (c) the state did not provide the technical assistance to the districts specified by law; and (d) the legislature had not funded the Educational Improvement Act sufficiently to permit the realization of program goals (Whitley County Board of Education, et al. v. John Brock, et al., 1990).

The New Kentucky Law

Yet another court case ended the 1984 educational deficiencies program. In Rose v. the Council for Better Education, Inc., 66 property-poor districts challenged the state educational system. The Kentucky Supreme Court's decision favored the school districts and found the state's entire system of financing and providing education in violation of the state's constitutional mandate for the provision of an "effective system of common schools." The decision required the state legislature to develop a new educational system that resulted in a sweeping reform of public education in the state. The new legislation, passed and signed into law in 1990, provides for a new state curriculum, new assessment procedures, prohibition of nepotism, involvement of teachers in policies that heretofore had been local board prerogatives, a new funding distribution scheme designed to narrow the gap between the richest and the poorest school districts, and a system of rewards and sanctions for individual schools. A billion dollar tax package increasing sales and corporate taxes was passed to fund the new system. Observers believe that it will take years to develop and implement the new system and even longer to gauge its impact.

Summary

What does the Kentucky case tell us? The availability of legislation authorizing takeover sanctions is only the first in a series of complicated planning steps that need to be taken to implement such a program in impaired districts. The Kentucky program was designed carefully. Multiple phases were specified before districts were placed in receivership. Evidence of the need to invoke takeover sanctions was copious, involving multiple criteria. A rich mix of technical assistnce was provided to the districts. The State Department of Education seemed to try conscientiously to avoid the takeover. Nonetheless, when the takeover occurred, the SDE and state officials were met with hostility and resentment, and the process fell apart in court suits.

The takeover strategy is never an easy one to implement. Local communities and individuals within organizations typically feel that failures are due to factors beyond their control (normally resources), that they know the problems better than outsiders, and that given time and resources, they are better able to solve those problems. Sometimes they are. Any takeover process has to err in the direction of trust in supporting local progress and initiative until the inability to improve seems to be established conclusively. Even then, the outside

agency should anticipate that those placed in charge of the receivership will find improvement impeded by local resistance.

The only national study of takeover and deregulation concluded that, "the strongest finding to emerge from our research is that, as implemented in Kentucky and New Jersey, takeover programs have very little to do with long-term educational improvement." (Fuhrman & Elmore, 1991, p. 28). They found that in Kentucky the emphasis was on compliance rather than improvement -- even including teaching to the test. In Jersey City, the emphasis seemed to be on altering governance and management in the hope that this might result in school improvement. In neither instance did they find that technical assistance penetrated to the school or classroom level.

Takeover is not a strategy that has been tested far and wide over years of trial and error. The researchers at the Consortium for Policy Research in Education who graciously allowed us to use findings from their field research do not contend that sanctions have negative outcomes, just that the instances they observed did little to move districts toward long-term educational improvement. They advocate proceeding with caution: "Unless states are clear about how intervention in troubled districts and schools can help those districts meet state goals, intervention is likely to be a symbolic gesture at best and a trauma with more detractions than benefits at worst." (p. 35) That seems true to us. And that posture toward initially providing extensive support and assistance to local school districts to solve their own problems is reflected in our recommendations for the effective use of sanctions.

POLICY ISSUES AND RECOMMENDATIONS FOR THE EFFECTIVE USE OF SANCTIONS

The stormy outcomes of the application of "last resort" sanctions in Kentucky and New Jersey support the message of the National Study Group of the Office of Educational Research and School Improvement, U.S. Department of Education: BE CLEAR, BE FAIR, BE OPEN

(National Study Group, 1988, p. 8). Three of the study group's recommendations are directly relevant to ultimate sanctions:

- Consider a broad range of help -- incentives, rewards, and relief from regulation -- to encourage both absolute high performance (ranking near the top of all schools in the state) and comparative high performance (making significant improvement or ranking near the top of schools with similar student bodies).
- If state intervention is considered appropriate in cases of poor school performance, proceed in fair and well-defined stages. Give local districts ample support and opportunity to improve on their own before the state intervenes.
- Establish a blue-ribbon independent body to oversee the system and recommend adjustments.

Our initial examination of the experience to date in other states, the advice of specialists on accountability systems, and research on school and organizational improvement led us to the following recommendations for the Board's consideration:

Assuring Fairness and Equity

You must anticipate challenges to every takeover. Consequently, the system should be designed and implemented to provide local districts an opportunity to present their case fairly and equitably within the system. This begins with a clear, understandable set of standards for performance that are being monitored and implemented statewide. Kentucky, for example, was unable to document in court that other districts were not exhibiting the same deficiencies exhibited by the two counties that were sanctioned. Even if Kentucky had been able to meet the criterion of equitable application, it might have lost out on the test of reasonableness, e.g., how substantial would public support be for a takeover system that relied on a 1.5 percent shortfall in the level of dropouts or attendance when the district was exhibiting improvement in either or both areas? This leads us to recommend that:

1. <u>The criteria to be used in arriving at a decision to apply sanctions be unambiguous and administered equitably across districts, and;</u>

2. The criteria used to justify takeover be decided upon for that purpose alone. They may include all or a part of the criteria used in the total state accountability system. They must involve critical indicators that emphasize outcomes rather than process. The extent of shortfall must meet the quasi-legal test of reasonableness.

Addressing School Building Level Failures

Currently, the sole focus of the North Carolina accountability system is on the school system. Schools can be failing within school districts that are not impaired. Predictably, the State will be faced with concerns from parents and citizens about schools that appear to be in crisis within districts that meet state-level performance criteria. This issue should be confronted before it arises as a legal challenge.

3. The State Board of Education should begin consideration of the state's responsibility for marked under-performance at the school level in districts that are not under sanction.

Establishing an Improvement-Oriented Sanctions Process

Since the purpose of the accountability system is to raise educational performance in North Carolina, the most critical issues of policy and implementation are the phases of assessment, planning, and implementation that occur prior to the takeover. Based on experiences to date in other states, we recommend that:

4. The Board establish multiple stages through which school districts will pass prior to the use of a takeover sanction that will include at least:

   a. Problem identification -- an intensive analysis of the many possible reasons for under-performance by a school district.

   b. Planning -- the design of a remedial plan of action that is directed specifically at the problems identified in the first phase;

   c. Implementation and assistance -- the specification of an adequate period of time during which the school district, supported by technical assistance and needed resources, has an opportunity to implement its plan and exhibit significant improvement. This may include a recycling through the phases of problem identification and planning if progress is being made by the school district but there is still a deficit in outcome measures;

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d. Takeover -- transfer of responsibility to an extra-district agent or agency if all self-help and technical assistance strategies have failed. The period of takeover should be monitored closely and terminated as quickly as possible.

Maintaining Local Control of Schools

Just as the best hope for school-level excellence is parent involvement in their children's education, the best hope for school district excellence is a community, citizenry, and professional staff committed to educational excellence.

5. The local community, including parents, educators, policy makers and business persons should be involved as thoroughly as possible in the entire process of remediation for school districts in crisis. They should be involved in analyzing weaknesses, planning for improvement, and implementation of the plan. In extreme cases of takeover, the out-of-district monitor or director should be required to work vigorously to involve the community in the school improvement process.

6. Every effort should be made to re-establish local autonomy over its schools as soon as effective indicators of success are available.

Quality Control of the Sanctions Process

State policy makers and educators have had little prior experience in the use of takeover sanctions as a tool for school improvement. The evidence that is available suggests that the process is complicated by technical inadequacies in measures of school performance, the difficulty of identifying causes for local under-performance and of providing needed technical assistance, and the resentment of local communities and policy makers where their school system has been identified as impaired. The purpose of sanctions and the process described in recommendations 1-6 is to effect school improvement. To insure that the sanctions are indeed attaining this end, we recommend:

7. The establishment of a quality control commission that reports annually to the State Board on the outcomes of the application of takeover sanctions and makes recommendations for improvement in the procedures employed in the process of implementing state-level sanctions.

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